## IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA ALBANY DIVISION

RICK F. ELLIS, :

Petitioner

:

VS. : 1:05-CV-06 (WLS)

TRACY STEPHENS, Probation Officer, Georgia Department of Corrections,

.

Respondent. :

## RECOMMENDATION

Presently pending in this § 2254 action is the respondent's Motion to Dismiss the Georgia Department of Corrections as an improper party respondent. The respondent argues that the Department of Corrections does not have custody of the petitioner, who is currently on probation, and that the Department therefore is not a proper party respondent herein. The court agrees. Pursuant to Rule 2(a) of the Rules Governing Habeas Corpus Cases under § 2254, "the state officer having custody of the applicant shall be named as the respondent." Herein, the petitioner's probation officer, Tracy Stephens, has been named as a respondent. To the extent that the petitioner has named the Georgia Department of Corrections as an additional party respondent, such designation is improper, and it is the recommendation of the undersigned that the respondent's Motion to Dismiss the Department as an improper party respondent be GRANTED.

Pursuant to 28 U.S.C. § 636(b)(1), the parties may file written objections to this recommendation with the Honorable W. Louis Sands, Chief United States District Judge,

WITHIN TEN (10) DAYS of receipt thereof.

**SO RECOMMENDED**, this 8<sup>th</sup> day of June, 2005.

/s/ Richard L. Hodge RICHARD L. HODGE UNITED STATES MAGISTRATE JUDGE